

**Utah Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)**

Thursday, December 15, 2022 - 12:00 to 2:00 p.m.

| Attended          |                |                   | Not Present         |
|-------------------|----------------|-------------------|---------------------|
| Judge Keith Kelly | Leslie Francis | Katie Thomson     | Judge David Connors |
| Judge James Brady | Nels Holmgren  | Holly Thorson     | Sarah Box           |
| Shane Bahr        | Eve Larsen     | James Toledo      | Brant Christiansen  |
| Deborah Brown     | Nan Mendenhall | Michelle Wilkes   | Rob Denton          |
| Tantalisa Clayton | Wendy Naylor   | Jace Willard      | Wendy Fayles        |
| Katie Cox         | Keri Sargent   | Kaye Lynn Wootton | Alan Ormsby         |
| Rob Ence          | Shonna Thomas  |                   | Andrew Riggle       |
|                   |                |                   | Danaka Robles       |
|                   |                |                   | Todd Weiler         |

| Agenda |   |  |  |
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|        | Topic   | Presenter  | Materials  |
| 12:00  | Meeting begins  |  |  |
|        | <ul style="list-style-type: none"> <li>Housekeeping</li> <li>Welcome new members</li> <li>Minutes</li> </ul>  | Judge Kelly                                      | – WINGS Minutes (October 2022 – draft)   |
| 12:10  | Ongoing Projects  |  |  |
|        | <ul style="list-style-type: none"> <li>Utah Code 75-5-303</li> </ul>  | Group Discussion<br>Judge Kelly<br>Shonna Thomas | – Utah Code 75-5-303 (for redlining)<br>– Utah Code 75-5-303 (revision sections) |
| 1:30   | Project Updates – time permitting   |  |  |
|        | <ul style="list-style-type: none"> <li>WINGS Membership                             <ul style="list-style-type: none"> <li>Successor process and nominations</li> <li>Missing agency representatives</li> </ul> </li> </ul> | Judge Kelly<br>Shonna Thomas                     | – WINGS Succession Plan  |
| 1:50   | Other Business  |  |  |
|        | <ul style="list-style-type: none"> <li>Judge Connors journal article</li> </ul>   | Shonna Thomas<br>Michelle Wilkes                 | – WINGS History (2005 -2022)   |
| 2:00   | Meeting adjourned   |  |  |

| Housekeeping  |
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| <ul style="list-style-type: none"> <li>Meeting began at 12:02pm.</li> <li>A motion was made to approve the minutes from the previous meeting (October 2022). The motion was seconded and approved.</li> <li>Meeting adjourned at 1:37pm.</li> </ul> |

## Ongoing Projects

### Utah Code 75-5-303

There are several items within the statute that could benefit from revision. Of highest priority is clarifying language under subsection (5)(a) related to in-person attendance at the hearing, reviewing the medical criteria listed in subsection (5)(b) and refining the existing language for the criteria to waive an attorney in subsection (5)(d). Some stakeholders who were unable to attend the meeting provided feedback in advance via email.

Stakeholders reviewed the statute, and discussed how feasible it would be to complete recommendations to the legislative liaison committee before the 2023 Legislative Session.

#### Discussion

- Subsection (5)(a) – in person attendance at the hearing.
  - Should in person attendance be based upon the respondent’s preferences and needs, rather than medical criteria, allowing them to participate in the way that is most comfortable for them?
  - Judges are currently considering “in person” attendance, as described in the statute, to include attendance via WebEx. Judges have been given discretion to determine whether to hold the hearing in the courthouse, remotely, or hybrid.
  - The Judicial Council recently made recommendations for judges on what to consider when determining whether a hearing take place remotely, in the courthouse, or a hybrid. This report will be shared with WINGS members.
  - Is the phrase “in person” necessary? Simply leaving it as “present at the hearing” allows for the various scenarios the judges have open to them, while keeping with the idea that the respondent will be able to see and hear all evidence brought forth.
  - Remote attendance has its own challenges, including access to technology resources, ability to navigate WebEx, and the risk that the judge may not be able to fully hear and see the respondent in these cases and ensure they are not being influenced by someone off camera.
  - The requirement of an attorney for the respondent described in subsection (2)(b) helps mitigate some of these challenges.
- Subsection (5)(b) – medical waiver of in person attendance.
  - This subsection seems to ask the judge to make some determination on capacity prior to the hearing.
  - Changing the medical language to reflect functional limitations might not fully capture what it means to be incapacitated, especially as it relates to functionality with or without assistance.
  - Is there a utility to having specific medical criteria? It may be more useful to strike out most of this subsection, leaving only extended comatosis. This supports presence at the hearing in most cases, even when function is limited in some manner.
  - Accommodation for or waiver from attending the hearing in person seems to fall into three categories, none of which relate to the individual’s capacity:

(1) respondents who cannot interact at all (e.g., coma);

(2) respondents who would be extremely disturbed or frightened in a courtroom environment or around large groups of people, such as some individuals with autism; and

(3) individuals with a physical illness or fragile state where attendance in a courtroom may be physically impossible or detrimental, such as those on a ventilator or someone who is immunocompromised.

For #2 and #3, a Court Visitor would be appropriate to confirm attendance ability, or any accommodations needed to attend. Since the requirement of a Court Visitor is already included in the statute as a resource to use when presence is in question, arbitrary medical criteria used to excuse a respondent may simply add to the confusion.

- Subsection (5)(d) –
  - There are regular instances where a full guardianship is appointed without an attorney representing the respondent or a Court Visitor assigned. Adding language in the statute to emphasize that all seven criteria listed in this subsection must be met before the attorney can be waived may increase compliance with the statute.
  - The statute could benefit from making clear that if the respondent's in person presence at the hearing is waived, the attorney cannot also be waived.
  - Adding clarifying language will highlight that having an attorney for the respondent should be the standard, not the exception.
  - A Court Visitor in lieu of an attorney for the respondent should be a last resort, as Court Visitors do not advocate for the respondent while the attorney is charged with doing so.

#### Decisions Made

- Shonna will send to stakeholders a copy of the Judicial Council recommendations for in person hearings.
- Shonna will send to stakeholders a combined redline draft incorporating the recommendations made during the meeting and those sent in advance by email.
- Stakeholders will provide any additional feedback and input before the final redline draft is submitted to the Liaison Committee.

### **Project updates**

#### **WINGS Membership**

In conjunction with becoming a committee of the Judicial Council, WINGS has been reviewing its membership roster to ensure positions are filled and a succession plan is in place for those retiring or leaving.

WINGS is nearly fully staffed. Based upon the membership list outlined in Rule 1-205, WINGS is missing only a representative from the Long-Term Care Ombudsman at this time.

Judge Kelly and Shonna will be presenting the WINGS Annual Report to the Judicial Council on February 27, 2023. The succession plan for judges will be brought to the Council at that time.

#### Decisions Made

- Nels Holmgren will follow up on filling the Long-Term Care Ombudsman position on WINGS.
- Judge Kelly plans to follow up with Judge Brady and Judge Connors for suggestions of judges who might be interested in participating with WINGS.

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| <b>Other Business</b>   |
| <p><b>Judge Connors Journal Article</b></p> <p>Judge Connors was asked to write an article for American Bar Association Judges’ division. This article is still in the editing phase. Once it is complete, it can be shared with WINGS stakeholders.</p> <p>As part of Judge Connors’ preparation for writing this article, he reached out for a history of WINGS. Michelle Wilkes took the lead on assisting him with gathering this information. Michelle put together a comprehensive list documenting the evolution of WINGS and the Court Visitor Program.</p> <p>Prior to the meeting, Judge Connors expressed appreciation for Michelle’s efforts and asked that this document be included in the materials packet for the December meeting, to ensure that it becomes part of the permanent record of WINGS. This history will also be added to the WINGS webpage resource material for the public and future WINGS stakeholders to view.</p> |

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| <b>Action Items</b>   |                    |
| <p><b>Utah Code 75-5-303</b></p> <ul style="list-style-type: none"> <li>– Send to stakeholders a copy of the Judicial Council recommendations for in person hearings.</li> <li>– Send to stakeholders a combined redline draft incorporating the recommendations made during the meeting and those sent in advance by email.</li> </ul> | Shonna Thomas      |
| <ul style="list-style-type: none"> <li>– Provide additional feedback and input before the final redline draft is submitted to the Liaison Committee.</li> </ul>   | WINGS Stakeholders |
| <p><b>WINGS Membership process</b></p> <ul style="list-style-type: none"> <li>– Follow up on filling the Long-Term Care Ombudsman position on WINGS.</li> </ul>   | Nels Holmgren      |
| <ul style="list-style-type: none"> <li>– Follow up with Judge Brady and Judge Connors for suggestions of judges who might be interested in participating with WINGS&gt;</li> </ul>  | Judge Kelly        |

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| <b>Deferred / Continuing Items</b>   |  |
| <ul style="list-style-type: none"> <li>– Utah Code 75-5-303</li> <li>– WINGS membership process</li> <li>– Project updates: Rule 6-501, Rule 6-507, and guardianship form revisions</li> <li>– New WINGS projects</li> </ul> |  |

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| <b>Next Meeting(s):</b> | <p>February 16, 2023</p> <p>April 20, 2023</p> <p>June 15, 2023</p> <p>August 17, 2023</p> <p>October 19, 2023</p> |
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